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(5)

No. 05-1508

In The
Supreme Court of the United States

ZUNI PUBLIC SCHOOL DISTRICT NO. 89, et al.,

Petitioners,

v.

DEPARTMENT OF EDUCATION, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF *AMICUS CURIAE* STATE OF ALASKA IN SUPPORT OF THE RESPONDENTS

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INTEREST OF THE *AMICUS CURIAE*

The State of Alaska submits this *amicus curiae* brief in support of the respondents United States Department of Education and State of New Mexico.[1] Alaska has a significant interest in outcome of this case for two reasons:

1. It is one of three states, including respondent New Mexico, that has passed the test of disparity under the federal Impact Aid program at issue in the case, 34 C.F.R. § 222.162, and 34 C.F.R. Pt. 222, Subpt. K, and

2. Its system of equalization would be seriously undermined if the more than $50 million federal impact aid to Alaska were redistributed as proposed by the petitioners.

SUMMARY OF THE ARGUMENT

The State of Alaska urges the court to affirm the October 11, 2001 decision of respondent United States Department of Education[2] and the regulations on which it is based, 34 C.F.R. § 222.162, and 34 C.F.R. Pt. 222, Subpt. K. The Secretary's decision and the regulations are consistent with 20 U.S.C. § 7709.

The federal government provides impact aid to local school districts affected by the presence of federal activity. 20 U.S.C. § 7701. It sets a number of conditions on the distribution of the aid, among them a prohibition against a

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[1] Sup. Ct. R. 37.

[2] Pet. App. at 34a, *ITMO Zuni Public School District, et al.*, Docket No. 99-81-I (Decision of the Secretary of Education, October 11, 2001), 2001 WL 34798131 (EDDS).

state's consideration of federal impact aid in its distribution of state aid. 20 U.S.C. § 7709(a). 20 U.S.C. § 7709(b) provides an exception to the prohibition. The exception applies to states with laws that provide an equalized system of school finance, that is, a system that equalizes the difference between rich and poor districts.

Alaska has an equalized system of school finance that assures that school districts with limited resources, including those without local tax authority, receive equitable state funding. Because Alaska has been certified as an equalized state by the United States Department of Education, it is permitted to consider federal impact aid in its distribution of state aid, and does so. If the Court strikes down the Secretary of Education's equalization formula as the petitioners suggest, Alaska may lose the ability to count federal impact aid against its contribution under § 7709. The paradoxical effect of such a decision would be that Alaska's equalized funding scheme would be undermined by federal impact funding.

The Secretary's application of the regulation should be upheld. The regulation is consistent with its authorizing statute because it best serves both Congressional intent and the equitable distribution of funds in equalized states.

ARGUMENT

I. THE CURRENT EQUALIZATION FORMULA IS CONSISTENT WITH CONGRESS'S INTENT AND THE PURPOSE OF THE IMPACT AID STATUTE

The petitioners' central challenge to the Secretary's decision at issue in this case[3] is that regulations on which it was based: 34 C.F.R. § 222.162, and 34 C.F.R. Pt. 222, Subpt. K, are in conflict with changes that Congress made in 1994 to eligibility provisions of the federal impact programs. To qualify under these provisions, a state must demonstrate that its distribution of state aid is equalized, thus enabling it to consider that impact aid when it distributes state aid.

The petitioners argue that § 7709(b) precludes the Secretary's current regulation. Petrs.' Br. 44. The statute allows a state to eliminate outliers, defined as "local educational agencies with per-pupil expenditures or revenues above the 95th percentile or below the 5th percentile of such expenditures or revenues in the State." 20 U.S.C. § 7709(b)(2)(B)(i).

As noted and fully discussed by the parties, the purpose of the impact aid program is to compensate a state for the effects of federal activity, such as military installations, or lands held in trust (and thus not taxable) for Native Americans or Alaska Natives.

Alaska is a state dominated by lands that fall within these categories. About 60% of Alaska's land – 222 million acres – is federally owned. Another approximately 44 million acres is land set aside under the Alaska Native

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[3] Pet. App. at 34a.

Claims Settlement Act and other federal statutes for Alaska Natives; much of such land is not subject to taxation.[4]

Alaska receives substantial impact aid for its military, trust, and other federally restricted lands, and stands to lose over $50 million of its deductible impact aid, now attributed to equalized districts. Attach. A at 11 (grand total of column W).[5] Ironically, the distribution of these funds directly to local school districts would undermine the equalization of the state's school funding scheme, the very result the equalization statute was designed to avoid. H.R. Rep. 93-805 at 4128-29 (1974).[6]

State education agencies ordinarily are prohibited from using Alaska's method of applying federal impact funds, reducing state aid to local school districts on account of impact aid eligibility. However, if a state has equalized its payments to its local districts, as measured by the Secretary's disparity test, it may count its payments toward its contribution to local districts. The objective of the disparity test is to assure that state funds are equitably distributed, that is, that there are not extreme differences among a state's local jurisdictions.

In 1976, when the Secretary adopted the first set of disparity test regulations, the United States Department

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[4] *See e.g.* Alaska Native Claims Settlement Act § 21, 43 U.S.C. § 1620. Alaska Department of Natural Resources, "Fact Sheet: Land Ownership in Alaska" (March 2000), http://www.dnr.state.ak.us/mlw/-factsht/land_own.pdf, visited December 8, 2006.

[5] Attachment A is Alaska's fiscal year 2005 federal impact aid equalization certification, along with supporting documents. *Cf.* JA at 85-92, a portion of New Mexico's equalization submission.

[6] Report concerning Education Amendments of 1974, P.L. 93-380.

of Education determined that it was necessary and appropriate to eliminate outliers and to do so on a per-pupil basis to avoid inequitable results:

> In regard to the question of pupils versus districts for the percentages used in calculating the disparity standard, it is the Commissioner's view that basing an exclusion on numbers of districts would act to apply the disparity standard in an unfair and inconsistent manner among States. The purpose of the exclusion is to eliminate those anomalous characteristics of a distribution of expenditures. In States with a small number of large districts, an exclusion based on percentage of school districts might exclude from the measure of disparity a substantial percentage of the pupil population in those States. Conversely, in States with large numbers of small districts, such an approach might exclude only an insignificant fraction of the pupil population and would not exclude anomalous characteristics.

41 Fed. Reg. 26320, 26324 (June 25, 1976). These considerations are reasonably related to the objective of the legislation: they assure that state, and federal impact funds are equitably distributed, without disincentive to state and local effort.[7] Nothing in the legislative record suggests that Congress disapproved of this method when it amended the statute in 1994. And indeed, as New Mexico points out in its opposition to the petition for certiorari, Congress reauthorized the statute after the Secretary readopted the regulations retaining the per-pupil method of determining the outliers, thus ratifying the Secretary's

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[7] *Cf. Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984).

action. Resp't N.M. Br. in Opp. to Cert. at 26. *See, e.g., Bob Jones University v. U.S.*, 461 U.S. 574, 591 (1983) (Congress's awareness of regulation denying tax exempt status to racially discriminatory schools and failure to change the regulation after several opportunities to do so ratified IRS interpretation of the law and public policy).

II. THE APPLICATION OF THE SECRETARY'S FORMULA TO THE STATES IS CONSISTENT WITH THE PURPOSE OF THE STATUTE

Like New Mexico, Alaska has an equitable school financing scheme. Under AS 14.17.410, the state requires municipal school districts to contribute a minimum amount, but caps additional local contributions. AS 14.17.410(b)(2). Alaska's scheme provides additional payments for small schools, AS 14.17.450, adjusts for cost differentials, AS 14.17.460; *cf.* 20 U.S.C. § 7709(b)(2)(B)(ii), and provides a block grant for special needs, AS 14.17.420.

The foregoing statutes were enacted for the most part in 1998. However, Alaska has had some form of adjustment for geographic differentials for school districts for many years. AS 14.17.051 (1970) (repealed, § 39, ch. 83, SLA 1998). There has been equalization based on local effort since at least 1988. AS 14.17.021 (1987) (repealed § 39, ch. 83, SLA 1998); AS 14.17.025 (1987) (repealed § 39 ch. 83, SLA 1998).

Alaska considers impact aid under the federal statute by counting 90% of eligible federal impact aid. AS 14.17.410(b)(1).

To determine disparity under 34 C.F.R. Pt. 222, Alaska employs an adjusted average daily membership.[8] The adjustments are based on the statutory factors set out above. Attach. A at 5, 8-11 column S.[9] The revenue per adjusted average daily membership (Attach. A at 6, at 11, column W) in a district is calculated by dividing the district's audited total revenue (Attach. A at 4, at 10, column R) by the adjusted average daily membership (Attach. A, column S). The United States Department of Education has approved the methodology employed in Attachment A[10], and has certified Alaska as equalized since 1988, and through the 1994 statutory changes. Alaska has a long history of significant state funding of schools – it does not have a tradition of reliance solely or even primarily on local taxation. Indeed Alaska's system has been referred to as one of the most equitable in the nation. *Matanuska-Susitna Borough School Dist. v. State*, 931 P.2d 391, 397 n. 8 (Alaska 1997).

Like New Mexico, Alaska, has many small school districts.[11] Thus, as with New Mexico, the application of the

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[8] Average daily membership (or ADM) is defined as aggregate number of full-time equivalent students enrolled in a school district during a student count period divided by the actual number of days that school is in session for the count period. AS 14.17.990(1).

[9] *See* Attach. A, disparity test documentation for FY '05. *See also* "K-12 Public School Operating Fund and Selected Special Revenue Funds" ("FY '05 Revenues"), http://www.eed.state.ak.us/stats/Resources/annual_revenues_05.xls (last visited December 8, 2006) which sets out the revenue per average daily membership, better illustrating that more funds are actually distributed to the smaller, more remote districts, including those without taxing authority under AS 14.08.011-14.08.021, rural education attendance areas.

[10] Attach. A at 15-18.

[11] *See* "FY '05 Revenues," http://www.eed.state.ak.us/stats/Resources/annual_revenues_05.xls, column marked "ADM."

5th and 95th percentiles to school districts instead of to pupils would result in the elimination of only five or six of the state's many school districts with small populations.

Under the petitioners' interpretation of the statute, the anomaly results with either the average daily membership and the adjusted average daily membership: only about four percent of the state's children would be considered outside the disparity test, including the state's boarding school at the bottom, and at the top, the North Slope Borough School District – with a tax base that includes the North Slope oil industry, and Pelican, a tiny school district that has only 11 students.[12] Other unusual districts (for example, Kashunamiut, a district with a single school site, and Valdez, a small district with a unique tax base – the terminal of the Trans-Alaska Pipeline) would not be included as outliers under petitioners' scheme. Under the Secretary's regulation, these *are* treated as outliers, consistent with the Secretary's finding that application of the disparity test on the basis of student numbers more successfully eliminates anomalies and assures uniform application of the test among the states.

The results of the regulations as applied are consistent with a reasonable conception of equalized school funding, both in Alaska and in New Mexico. An example will illustrate how the petitioners' contrary interpretation would severely undermine equalization. Annette Island School District is in the middle of the state's district rankings under the current scheme. Attach. A at 10. Under the petitioners' interpretation of § 7709, the amount listed as "adjusted deductible impact aid" – a significant percentage

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[12] *Id.*

of the school district's total revenue, Attach. A, column N[13], would be added to total revenues, Attach. A, column R. Taking that total $4,258,615 and dividing it by the adjusted average daily membership of the district, 546.58, would increase the revenue per adjusted average daily membership of the district from $5,610 to $7,791.

Another small district, Chatham, similar to Annette Island in that it has no local revenue (Attach. A at 9, column J), would obtain a radically different result.[14] Its deductible impact aid is $217,749. Attach. A at 9, column N. That, added to its audited total revenues and divided by adjusted daily membership, would yield a much smaller increase. Haines School District, with local revenue but only $3,160 in deductible impact aid, similar total revenues and a similar adjusted daily membership, would see little increase, to only $5,641, but as a municipal school district it would be limited by AS 14.17.410(c) in raising additional revenues.

Thus, three districts with similar revenue and adjusted average daily membership would diverge widely in combined impact and state aid. Alaska's statutory equalization would be seriously and substantially undermined, a result directly contrary to the purpose of 20 U.S.C. § 7709(b).

Further, application of the statute in the manner that the petitioners advocate would eliminate all, or all but one,

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[13] Described in Attach. A at 4.

[14] Chatham and Annette Island School Districts are rural education attendance areas not required to make a minimum local contribution under state law.

state from consideration under § 7709. As a result, equitable funding would end. The legislative history suggests that this was not Congress's intent.[15]

CONCLUSION

Amicus curiae State of Alaska respectfully requests the court to uphold the Secretary's decision and regulation, and to adopt the reasoning of the vacated decision of the Tenth Circuit Court of Appeals.

Dated December 14th, 2006.

Respectfully submitted,

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[15] In fact, it suggests to the contrary, that New Mexico, Alaska, and Kansas would continue to be eligible to take federal impact aid into account in the payment of state aid. In a discussion of a state grants provision of the 1994 amendments to federal education law, the conference report refers to the equalization compliance of New Mexico, Alaska, and Kansas as if it were a given. H.R. Rep. 103-761 at 639 (1994) (Conf. Rep.), *reprinted in* 1994 U.S.C.C.A.N. 2901, 2970, discussing Improving America's Schools Act of 1994, P.L. 103-382.

Attachment A

STATE OF ALASKA

Department of Education & Early Development

Office of the Commissioner

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MEMORANDUM NUMBER 2006-17

To: Superintendents
School District Business Managers
/s/ Roger Sampson

From: Roger Sampson, Commissioner

Date: February 22, 2006

Subject: Title VIII – Impact Aid Adjustments Under AS 14.17.410

* *

The purpose of this memorandum is to give you notice that, pursuant to section 8009(c)(1)(b) of Title VIII – Impact Aid, the State of Alaska is requesting permission from the federal government to take impact aid payments into account in determining state aid payments to school districts during the state fiscal year 2007. All school districts receiving impact aid during fiscal year 2007 are subject to such adjustments as provided in AS 14.17.

If you have any questions, please contact Eddy Jeans, Director of School Finance, at 465-8679. Thank you.

cc: Eddy Jeans, Director, Division of School Finance
Mindy Lobaugh, School Finance Specialist

STATE OF ALASKA
Department of Education
& Early Development
Division of School Finance

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February 23, 2006

Catherine Schagh, Director
Division of Impact Aid
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202-6244

Dear Ms. Schagh:

Enclosed is Alaska's disparity submission of fiscal year 2005 data to be used for fiscal year 2007 certification based upon the provisions of 34 C.F.R. 222.62. This information contains spreadsheets along with copies of the refund notification of payments that were electronically transferred to the Alaska LEAs for Impact Aid funds previously withheld during the 2005 school year.

Please accept this letter as formal notice that the State of Alaska, Department of Education & Early Development, intends to consider Impact Aid payments when allocating state aid to schools for the period July 2006 to June 2007. This notice is required under section 8009(c)(1)(A) of Title VIII-Impact Aid, Section 8009(c)(1)(B) requires this notice to be in the form, and to contain information, that the Secretary requires. The state's plan for an equalized education-funding program is located in Alaska Statute

14.17. Please note there are no regulations yet prescribing what information the Secretary wants submitted, but these submissions are made at the direction of USDOE Impact Aid Program staff. If the Secretary desires any other information, he/she should notify the state immediately so the state can fully comply. Additionally, enclosed is a copy of the letter notifying LEAs of the state's intent to consider Impact Aid funds during the Fiscal year 2007 foundation distribution.

The information submitted is accurate and complete to the best of our knowledge. Should you have any questions or require additional information, please contact me at (907) 465-8679.

Sincerely,

/s/ Eddy Jeans
Eddy Jeans
Director
School Finance

EXPLANATION OF FY2005 DISPARITY TEST COMPUTATIONS & WORKSHEETS

PAGES 1, 2 & 3 OF EXHIBIT

Column A *SCHOOL DISTRICT* lists the LEA's in operation during FY2005.

Column B *ACTUAL FY2005 STATE FOUNDATION PAYMENTS* as distributed by the Alaska Department of Education during the 2004-05 school year. These amounts represent state support payments received by the LEA's under provisions of the Alaska Public School Foundation Program. AS 14.17, 34 CFR 222.63(d)(1)

Column C *ADJUSTMENTS BASED ON AUDITS* amounts represent FY2005 state aid due to LEA's based on audited local revenues and adjustments to Impact Aid as directed by the USDOE Impact Aid Office. Amounts are carried forward from page 5 column AA (AMOUNT STATE OWES).

Column D *FY2005 OTHER STATE REVENUE* as reported in the School Operating Fund (general fund) of all LEA audits for the fiscal year tested. Amounts represent all other state revenue not reported under the specific categories above. 34 CFR 222.63(d)(1)

Column E *SUB-TOTAL STATE REVENUE* combines all revenue in columns B, C and D.

Column F *FY2005 CITY/BOROUGH APPROPRIATIONS* as reported in municipal LEA audits for the fiscal year tested. (In Alaska, only cities and boroughs/"municipal governments" have the power of taxation and legal responsibility to support public schools; there are no local appropriations for REAA's.) 34 CFR 222.63(d)(2)

Column G *FY2005 EARNINGS ON INVESTMENTS* as reported in municipal LEA audits for the fiscal year tested.
34 CFR 222.63(d)(2)

Column H *FY2005 OTHER LOCAL REVENUE* as reported in municipal LEA audits for the fiscal year tested. Amounts include all local revenue not reported in columns F, G and I.
34 CFR 222.63(d)(2)

Column I *FY2005 IN-KIND SERVICES* as reported in municipal LEA audits for the fiscal year tested. Amounts represent the value of services provided to the LEA by the municipal government.

Column J *SUB-TOTAL LOCAL REVENUE* combines all revenue in columns F, G, H and I.

Column K *FY2005 OTHER REAA REVENUE* contains revenues received and reported by REAA LEA's in FY2005 audits. Revenues are included as required by 34 CFR 222.63(d).

Column L *FY2005 TUITION FROM STUDENTS* are payments received from students enrolled in any instructional program for which a tuition fee is collected by the district.

Column M *FY2005 TUITION FROM DISTRICTS* are payments received from other school districts enrolled in any instructional program for which a tuition fee is collected by the district.

Column N *ADJUSTED DEDUCTIBLE IMPACT AID* are amounts of Impact Aid funds deducted by the Alaska Department of Education & Early Development during the 2004-2005 school year when determining state aid to LEA's for the year, less adjustments from column C.

Column O *FY2005 OTHER FEDERAL FUNDS* as reported in LEA audits for the fiscal year tested. These are reported federal revenues to the general operating fund which are not restricted as to use by other federal law or regulations.
34 CFR 222.63(d)(4).

Column P *FY2005 OTHER REVENUE* is other sources of Federal revenue which are not classified elsewhere.

Column Q *FY2005 FUND TRANSFERS IN* lists amounts transferred from other school district funds into the school operation fund as reported in LEA audits for FY2005. Such transfers represent revenues to the general operating fund.

Column R *FY2005 AUDITED TOTAL REVENUES* is the total of:
column E – Sub-Total State Revenue
column J – Sub-Total Local Revenue
column K – FY2005 Other REAA Revenue
column L – FY2005 Tuition from Students
column M – FY2005 Tuition from Districts
column N – Adjusted Deductible Impact Aid
column O – FY2005 Other Federal Funds
column P – FY2005 Other Revenue
column Q – FY2005 Fund Transfers In

Column S *ADJUSTED ADM* is calculated by:

1. Taking the aggregate number of full-time equivalent students enrolled during a count period divided by the number of days in the count period as defined in AS 14.17.990.

2. Adjust that number for school size as defined in AS 14.17.450.

3. Multiply it by the district cost factor as defined in AS 14.17.460.

4. Apply the Special Needs & Intensive Services Funding factor of 1.2 as defined in AS 14.17.420(1).

5. Add to this the aggregate number of Intensive Students multiplied by 5.

6. And finally add the aggregate number of correspondence students multiplied by 80% as defined in AS 14.17.420(2) and AS 14.17.430, respectively.

Column T *REVENUE PER ADJUSTED ADM* calculated by dividing column R by column S.

COMPUTATION OF DISPARITY:

The computation of disparity is performed as required by 34 CFR 222.63(a) using the methodology described in the paragraph numbered 1. The computations are displayed in the bottom right corner of page 3. Specifically, the disparity computation is performed as follows:

a. The revenues per adjusted Average Daily Membership (ADM) are ranked in descending order.

b. The 95th and 5th percentiles are identified as follows:

1. Total FY2005 Adjusted ADM are multiplied by 5% to obtain the target number needed to find the 95th and 5th percentiles of the adjusted ADM.

2. Total FY2005 Adjusted ADM are added from the top down until the target number is

reached identifying the LEA at the 95th percentile; it is identified by the word "HIGH."

3. Total FY2005 Adjusted ADM are added from the bottom up until the target number is reached identifying the LEA at the 5th percentile; it is identified by the word "LOW."

c. The amount of revenue per adjusted ADM (column T) for the "LOW" LEA is subtracted from the amount shown for the "HIGH" LEA. The result is divided by the amount shown for the low LEA, yielding the percentage of disparity.

ACTUAL IMPACT AID
DEDUCTED LESS ADJUSTMENTS

PAGE 4 OF EXHIBIT

Column A *SCHOOL DISTRICT* lists the LEA's in operation during fiscal year 2005.

Column U *FY2005 ACTUAL DEDUCTIBLE FEDERAL PL81-874* lists the amounts of Impact Aid funds the Alaska Department of Education deducted when determining state aid to LEA's for the 2004-05 school year.

Column V *ADJUSTMENTS BASED ON AUDITS* lists the amounts representing FY2005 state aid due LEA's based on audited local revenues and adjustments to Impact Aid as directed by the USDOE Impact Aid Office. These amounts are carried forward from page 5 column AA (AMOUNT STATE OWES.)

Column W *ADJUSTED DEDUCTIBLE IMPACT AID (PL81-874)* amounts represent column U less column V.

EXPLANATION OF FOUNDATION AUDITED VS. ACTUAL DATA

PAGE 5 OF EXHIBIT

Column A *SCHOOL DISTRICT* lists the LEA's in operation during fiscal year 2005.

Column X *STATE AID BASED ON AUDITS* lists amounts that *should have been paid* to the LEA's based on audited data.

Column Y *ACTUAL STATE AID PAID* lists the amounts that were *actually paid* to the LEA's during FY2005.

Column Z *AUDITS LESS PAID* represents the difference between column X and column Y.

Column AA *AMOUNT STATE OWES* lists the amounts owed LEA's by the State of Alaska. Amounts are listed in column C, page 1 of the disparity test (adjustments based on audits).

Alaska Department of Education and Early Development 12/12/2006 FILE: DisparityTest_2005.xls
FY2005 Disparity Test
Compiled from Fiscal Year 2005 Audits

A	B	C	D	E	F	G
SCHOOL DISTRICT	ACTUAL FY2005 STATE FOUNDATION PAID	ADJUSTMENTS BASED ON AUDITS	FY2005 Other STATE REVENUE	SUB-TOTAL STATE REVENUE	FY2005 CITY/BOROUGH APPROP.	FY2005 EARNINGS ON INVESTMENTS
NORTH SLOPE	9,289,803	566	0	9,290,369	22,991,968	
PELICAN	404,883	0	4,269	409,152	52,121	1,413
SKAGWAY	824,525	0	15,386	839,911	841,452	520
VALDEZ	3,977,578	5	79,850	4,057,433	4,949,342	19,989
ALEUTIANS EAST	3,444,655	6,835	0	3,451,490	908,556	
CHUGACH	1,908,930	0	0	1,908,930		0
KODIAK	15,355,959	15,017	879,582	16,250,558	7,491,892	
HOONAH	1,475,529	0	0	1,475,529	505,400	5,155
SOUTHEAST ISLAND	3,041,735	0	41,098	3,082,833		0
WRANGELL	2,285,953	50	0	2,286,003	862,007	3,922
UNALASKA	2,407,692	57	54,294	2,462,043	2,270,451	17,397
HYDABURG	767,001	0	3,154	770,155		2,396
YAKUTAT	1,124,399	0	0	1,124,399	388,000	6,462
KENAI PENINSULA	46,467,674	0	69,324	46,536,998	26,788,170	197,556
JUNEAU	24,109,681	0	20,445	24,130,126	18,835,000	
LAKE & PENINSULA	6,146,267	0	62,846	6,209,113	869,253	84,268
HAINES	1,726,634	0	0	1,726,634	1,363,044	2,445
ANNETTE ISLAND	1,317,721	0	0	1,317,721		0
KLAWOCK	1,312,432	5,042	0	1,317,474	297,009	17,037
CRAIG	3,667,606	7,515	2,498	3,677,619	860,278	10,854
ANCHORAGE	227,384,902	61,152	408,484	227,854,538	133,412,722	1,496,977
MAT-SU	81,777,454	0	0	81,777,454	33,928,357	
CHATHAM	2,030,356	0	0	2,030,356		0
SITKA	7,448,961	0	0	7,448,961	4,787,292	
KETCHIKAN	11,530,586	3	0	11,530,589	7,106,968	2,183
IDITAROD	4,253,299	0	34,301	4,287,600		0
KAKE	1,219,900	1,610	4,320	1,225,830	170,000	7,538
CORDOVA	3,074,466	39	0	3,074,505	1,333,000	482
FAIRBANKS	73,252,725	0	1,450,000	74,702,725	36,545,700	
YUKON FLATS	4,454,522	0	74,029	4,528,551		0
BRISTOL BAY	1,154,967	0	0	1,154,967	600,308	2,990
DENALI	4,469,672	0	0	4,469,672	1,250,000	10,718
SOUTHWEST REGION	6,756,535	0	0	6,756,535		0
PETERSBURG	3,894,437	0	0	3,894,437	1,655,469	12,482
NORTHWEST ARCTIC	21,078,927	0	0	21,078,927	3,215,493	129,047
ALEUTIAN REGION	1,064,031	0	15,939	1,079,970		0
GALENA	15,986,233	0	227,038	16,213,271	25,000	18,690
BERING STRAIT	16,637,274	0	0	16,637,274		0
DILLINGHAM	4,159,419	15,991	0	4,175,410	1,000,000	26,937
NOME	6,055,521	0	13,734	6,069,255	1,420,577	7,523
NENANA	4,002,980	0	0	4,002,980	73,183	1,968
LOWER KUSKOKWIM	38,155,539	0	671,330	38,826,869		0
KUSPUK	4,600,598	0	0	4,600,598		0
YUPIIT	4,261,258	0	80,460	4,341,718		0
ALASKA GATEWAY	4,940,741	0	77,802	5,018,543		0
TANANA	1,056,230	0	0	1,056,230	22,692	283
PRIBILOF	1,189,523	0	7,901	1,197,424		0
LOWER YUKON	18,024,480	0	0	18,024,480		0
KASHUNAMIUT	2,548,283	0	0	2,548,283		0
YUKON-KOYUKUK	9,957,634	0	0	9,957,634		0
SAINT MARY'S	1,859,327	784	0	1,860,111		7,309
DELTA GREELY	7,989,114	0	0	7,989,114		0
COPPER RIVER	5,964,425	0	0	5,964,425		0
Z MT. EDGECUMBE	1,630,642	0	0	1,630,642		
TOTALS	$734,921,618	$114,666	$4,298,083	$739,334,367	$316,820,704	$2,094,541

Alaska Department of Education and Early Development 12/12/2006 FILE: DisparityTest_2005.xls
FY2005 Disparity Test
Compiled from Fiscal Year 2005 Audits

A	H	I	J	K	L	M	N
SCHOOL DISTRICT	FY2005 OTHER LOCAL REVENUE	FY2005 IN-KIND SERVICES	SUB-TOTAL LOCAL REVENUE	FY2005 OTHER REAA REVENUE	FY2005 TUITION STUDENTS	FY2005 TUITION DISTRICTS	ADJUSTED DEDUCTIBLE IMPACT AID
NORTH SLOPE	48,225	563,910	23,604,103	0			2,052,369
PELICAN	3,071		56,605	0			0
SKAGWAY	1,314		843,286	0			0
VALDEZ	49,850		5,019,181	0			1,256
ALEUTIANS EAST	25,209	225,450	1,159,215	0			277,122
CHUGACH	0		0	64,922			144,289
KODIAK	243,434	840,548	8,575,874	0			897,393
HOONAH	58,930		569,485	0			113,213
SOUTHEAST ISLAND	0		0	139,474			34,639
WRANGELL	13,291	29,000	908,220	0			4,027
UNALASKA	36,214		2,324,062	0			6,586
HYDABURG	26,532	65,000	93,928	0			64,472
YAKUTAT	10,425	28,000	432,887	0			78,935
KENAI PENINSULA	318,521	6,956,437	34,260,684	0			0
JUNEAU	198,579		19,033,579	0			0
LAKE & PENINSULA	321,120		1,274,641	0			262,798
HAINES	10,553		1,376,042	0			3,160
ANNETTE ISLAND	0		0	127,305			1,192,174
KLAWOCK	23,407		337,453	0			171,489
CRAIG	189,437	111,423	1,171,992	0			100,491
ANCHORAGE	2,485,733		137,395,432	0	24,317		6,435,081
MAT-SU	140,285		34,068,642	0			0
CHATHAM	0		0	45,172		850	217,749
SITKA	41,606		4,828,898	0			8,959
KETCHIKAN	10,885	530,238	7,650,274	0			4,554
IDITAROD	0		0	148,769			618,641
KAKE	5,745	110,000	293,283	0	2,951		111,210
CORDOVA	6,610	33,000	1,373,092	0			11,792
FAIRBANKS	464,871		37,010,571	0			6,490,660
YUKON FLATS	0		0	56,471			1,200,083
BRISTOL BAY	5,946	321,271	930,515	0			303,089
DENALI	3,075		1,263,793	0			7,232
SOUTHWEST REGION	0		0	482,803			2,451,849
PETERSBURG	36,084		1,704,035	0			0
NORTHWEST ARCTIC	426,683		3,771,223	0	333,058		2,264,786
ALEUTIAN REGION	0		0	19,586			189,211
GALENA	488,217	434,172	966,079	0	5,164		68
BERING STRAIT	0		0	1,701,968			6,693,025
DILLINGHAM	154,966		1,181,903	0			282,825
NOME	189,772		1,617,872	0			41,658
NENANA	337,567		412,718	0			0
LOWER KUSKOKWIM	0		0	528,075			10,359,531
KUSPUK	0		0	95,529			1,373,318
YUPIIT	0		0	49,375			1,608,053
ALASKA GATEWAY	0		0	42,475			300,287
TANANA	29,042		52,017	0		3,922	13,193
PRIBILOF	0		0	17,231			546,574
LOWER YUKON	0		0	534,420			6,606,365
KASHUNAMIUT	0		0	34,263			1,310,972
YUKON-KOYUKUK	0		0	82,279			1,215,841
SAINT MARY'S	42,174	20,689	70,172	0			1,898
DELTA GREELY	0		0	81,330			25,010
COPPER RIVER	0		0	84,996			267,516
Z MT. EDGECUMBE			0	0			801,052
TOTALS	$6,447,373	$10,269,138	$335,631,756	$4,336,443	$365,490	$4,772	~~$57,166,495~~

Alaska Department of Education and Early Development 12/12/2006 FILE: DisparityTest_2005.xls
FY2005 Disparity Test
Compiled from Fiscal Year 2005 Audits

A	O	P	Q	R	S	T	
SCHOOL DISTRICT	FY2005 OTHER FEDERAL FUNDS	FY2005 OTHER REVENUE	FY2005 FUND TRANSFERS IN	FY2005 AUDITED TOTAL REVENUES	ADJUSTED ADM	REVENUE PER ADJ. ADM	
NORTH SLOPE	0	330,021		35,276,862	4,331.00	8,145	
PELICAN	2,000	6,928		474,685	66.30	7,160	
SKAGWAY	2,000	8,643		1,693,840	252.70	6,703	
VALDEZ	12,118	21,931		9,111,919	1,409.10	6,466	
ALEUTIANS EAST	364	883,209		5,771,400	892.69	6,465	
CHUGACH	0	222,175		2,340,316	368.42	6,352	7,320
KODIAK	0	472,565		26,196,390	4,377.60	5,984	HIGH
HOONAH	0	65,544		2,223,771	372.73	5,966	
SOUTHEAST ISLAND	258,056	133,272		3,648,274	615.82	5,924	
WRANGELL	454,280	44,268		3,696,798	626.02	5,905	
UNALASKA	2,000	6,358		4,801,049	815.94	5,884	
HYDABURG	0	35,162		963,717	163.98	5,877	
YAKUTAT	0	27,283		1,663,504	286.89	5,798	
KENAI PENINSULA	0	435,323		81,233,005	14,210.70	5,716	
JUNEAU	37,676	17,156		43,218,537	7,614.72	5,676	
LAKE & PENINSULA	0	470,603		8,217,155	1,449.69	5,668	
HAINES	0	41,365		3,147,201	558.48	5,635	
ANNETTE ISLAND	339,228	90,013		3,066,441	546.58	5,610	
KLAWOCK	0	20,477		1,846,893	329.74	5,601	
CRAIG	3,455	94,340		5,047,897	902.52	5,593	
ANCHORAGE	386,895	666,671		372,762,934	66,966.48	5,566	
MAT-SU	168,778	268,398		116,283,272	20,898.86	5,564	
CHATHAM	252,669	176,049		2,722,845	489.57	5,562	
SITKA	16,824	39,887		12,343,529	2,220.18	5,560	
KETCHIKAN	21,299	50,140		19,256,856	3,468.42	5,552	
IDITAROD	0	213,361		5,268,371	955.96	5,511	
KAKE	0	50,578		1,683,852	305.80	5,506	
CORDOVA	0	31,580		4,490,969	824.02	5,450	
FAIRBANKS	99,358	255,646		118,558,960	21,779.03	5,444	
YUKON FLATS	0	222,410		6,007,515	1,106.21	5,431	
BRISTOL BAY	0	27,501		2,416,072	448.25	5,390	
DENALI	2,000	113,487		5,856,184	1,097.80	5,334	
SOUTHWEST REGION	0	1,002,972		10,694,159	2,005.31	5,333	
PETERSBURG	7,148	19,553		5,625,173	1,062.92	5,292	
N WEST ARCTIC	0	1,192,946		28,640,940	5,416.02	5,288	
ALEUTIAN REGION	2,802	15,650		1,307,219	247.49	5,282	
GALENA	0	213,304		17,397,886	3,296.97	5,277	
BERING STRAIT	0	1,690,047		26,722,314	5,080.64	5,260	
DILLINGHAM	6,061	61,798		5,707,997	1,087.85	5,247	
NOME	6,820	25,588		7,761,193	1,503.84	5,161	
NENANA	0	80,939		4,496,637	887.67	5,066	
LOWER KUSKOKWIM	0	2,380,109		52,094,584	10,347.39	5,035	
KUSPUK	129,182	350,854		6,549,481	1,300.94	5,034	
YUPIIT	0	386,824		6,385,970	1,278.16	4,996	
ALASKA GATEWAY	0	219,540		5,580,845	1,118.55	4,989	
TANANA	12,131	46,893		1,184,386	237.83	4,980	
PRIBILOF	5,080	83,622		1,849,931	378.07	4,893	
LOWER YUKON	0	913,151		26,078,416	5,363.86	4,862	LOW
KASHUNAMIUT	19,646	138,255		4,051,419	840.43	4,821	7,315
YUKON-KOYUKUK	0	441,841		11,697,595	2,433.25	4,807	
SAINT MARY'S	0	6,397		1,938,578	409.24	4,737	
DELTA GREELY	17,745	80,701		8,193,900	1,745.24	4,695	
COPPER RIVER	0	29,731		6,346,668	1,357.13	4,677	
Z MT. EDGECUMBE	0	0		2,431,694	529.55	4,592	
TOTALS	$2,265,615	$14,923,059	$0	$1,154,027,997	208,680.54		

5%	HIGH	5,984
10,434.03	LOW	4,862
	DIFF	1,122
	DISPARITY	23.08%

App. 12

ALASKA DEPARTMENT OF EDUCATION & EARLY DEVELOPMENT
FY2005 DISPARITY TEST
COMPILED FROM FISCAL YEAR 2004 AUDITS

A	U	V	W
SCHOOL DISTRICT	Actual Deductible Impact Aid	Adjustments Based on Audits	Adjusted Deductible Impact Aid
ALASKA GATEWAY	300,287	-	300,287
ALEUTIAN REGION	189,211	-	189,211
ALEUTIANS EAST	270,287	6,835	277,122
ANCHORAGE	6,373,929	61,152	6,435,081
ANNETTE ISLAND	1,192,174	-	1,192,174
BERING STRAIT	6,693,025	-	6,693,025
BRISTOL BAY	303,089	-	303,089
CHATHAM	217,749	-	217,749
CHUGACH	144,289	-	144,289
COPPER RIVER	267,516	-	267,516
CORDOVA	11,753	39	11,792
CRAIG	92,976	7,515	100,491
DELTA GREELY	25,010	-	25,010
DENALI	7,232	-	7,232
DILLINGHAM	266,834	15,991	282,825
FAIRBANKS	6,490,660	-	6,490,660
GALENA	68	-	68
HAINES	3,160	-	3,160
HOONAH	113,213	-	113,213
HYDABURG	64,472	-	64,472
IDITAROD	618,641	-	618,641
JUNEAU	-	-	-
KAKE	109,600	1,610	111,210
KASHUNAMIUT	1,310,972	-	1,310,972
KENAI PENINSULA	-	-	-
KETCHIKAN	4,551	3	4,554
KLAWOCK	166,447	5,042	171,489
KODIAK	882,376	15,017	897,393
KUSPUK	1,373,318	-	1,373,318
LAKE & PENINSULA	262,798	-	262,798
LOWER KUSKOKWIM	10,359,531	-	10,359,531
LOWER YUKON	6,606,365	-	6,606,365
MAT-SU	-	-	-
NENANA	-	-	-
NOME	41,658	-	41,658
NORTH SLOPE	2,051,803	566	2,052,369
NORTHWEST ARCTIC	2,264,786	-	2,264,786
PELICAN	-	-	-
PETERSBURG	-	-	-
PRIBILOF	546,574	-	546,574
SAINT MARY'S	1,114	784	1,898
SITKA	8,959	-	8,959
SKAGWAY	-	-	-
SOUTHEAST ISLAND	34,639	-	34,639
SOUTHWEST REGION	2,451,849	-	2,451,849
TANANA	13,193	-	13,193
UNALASKA	6,529	57	6,586
VALDEZ	1,251	5	1,256
WRANGELL	3,977	50	4,027
YAKUTAT	78,935	-	78,935
YUKON FLATS	1,200,083	-	1,200,083
YUKON-KOYUKUK	1,215,841	-	1,215,841
YUPIIT	1,608,053	-	1,608,053
ZMI EDGECUMBE	801,052	-	801,052
	57,051,829	114,666	57,166,495

ALASKA DEPARTMENT OF EDUCATION & EARLY DEVELOPMENT
FY2005 DISPARITY TEST
COMPILED FROM FISCAL YEAR 2005 AUDITS

A	X	Y	Z	AA
SCHOOL DISTRICT	State Aid Based on Audits	Actual State Aid Paid	Audits Less paid	Amount State Owes
ALASKA GATEWAY	4,940,741	4,940,741	-	-
ALEUTIAN REGION	1,064,031	1,064,031	-	-
ALEUTIANS EAST	3,451,490	3,444,655	6,835	6,835
ANCHORAGE	227,446,054	227,384,902	61,152	61,152
ANNETTE ISLAND	1,317,721	1,317,721	-	-
BERING STRAIT	16,637,274	16,637,274	-	-
BRISTOL BAY	1,152,885	1,154,967	(2,082)	-
CHATHAM	2,030,356	2,030,356	-	-
CHUGACH	1,908,930	1,908,930	-	-
COPPER RIVER	5,964,425	5,964,425	-	-
CORDOVA	3,074,505	3,074,466	39	39
CRAIG	3,675,121	3,667,606	7,515	7,515
DELTA GREELY	7,989,114	7,989,114	-	-
DENALI	4,469,597	4,469,672	(75)	-
DILLINGHAM	4,175,410	4,159,419	15,991	15,991
FAIRBANKS	73,209,772	73,252,725	(42,953)	-
GALENA	15,986,193	15,986,233	(40)	-
HAINES	1,726,609	1,726,634	(25)	-
HOONAH	1,474,736	1,475,529	(793)	-
HYDABURG	734,696	767,001	(32,305)	-
IDITAROD	4,253,299	4,253,299	-	-
JUNEAU	24,109,681	24,109,681	-	-
KAKE	1,221,510	1,219,900	1,610	1,610
KASHUNAMIUT	2,548,283	2,548,283	-	-
KENAI PENINSULA	46,467,674	46,467,674	-	-
KETCHIKAN	11,530,589	11,530,586	3	3
KLAWOCK	1,317,474	1,312,432	5,042	5,042
KODIAK	15,370,976	15,355,959	15,017	15,017
KUSPUK	4,600,598	4,600,598	-	-
LAKE & PENINSULA	6,140,608	6,146,267	(5,659)	-
LOWER KUSKOKWIM	38,155,539	38,155,539	-	-
LOWER YUKON	18,024,480	18,024,480	-	-
MAT-SU	81,777,454	81,777,454	-	-
NENANA	4,002,980	4,002,980	-	-
NOME	6,055,082	6,055,521	(439)	-
NORTH SLOPE	9,290,369	9,289,803	566	566
NORTHWEST ARCTIC	21,004,975	21,078,927	(73,952)	-
PELICAN	404,883	404,883	-	-
PETERSBURG	3,894,437	3,894,437	-	-
PRIBILOF	1,189,523	1,189,523	-	-
SAINT MARY'S	1,860,111	1,859,327	784	784
SITKA	7,448,951	7,448,961	(10)	-
SKAGWAY	824,525	824,525	-	-
SOUTHEAST ISLAND	3,041,735	3,041,735	-	-
SOUTHWEST REGION	6,756,535	6,756,535	-	-
TANANA	1,041,199	1,056,230	(15,031)	-
UNALASKA	2,407,749	2,407,692	57	57
VALDEZ	3,977,583	3,977,578	5	5
WRANGELL	2,286,003	2,285,953	50	50
YAKUTAT	1,124,276	1,124,399	(123)	-
YUKON FLATS	4,454,522	4,454,522	-	-
YUKON-KOYUKUK	9,957,634	9,957,634	-	-
YUPIIT	4,261,258	4,261,258	-	-
Z Mt. EDGECUMBE	1,630,642	1,630,642	-	-
	734,862,797	734,921,618	(58,821)	114,666

[SEAL] UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND
SECONDARY EDUCATION

May 15, 2006

Honorable Roger Sampson
Commissioner
Alaska Department of Education and Early Development
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894

Dear Commissioner Sampson:

Enclosed are a certification and related report confirming that Alaska meets the requirements of section 8009(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7709(b)). This means that the State is eligible to consider a portion of Impact Aid payments as local resources in determining State aid entitlements for the period July 1, 2005-June 30, 2006 (fiscal year 2006).

A copy of the certification and report is being sent to all school districts in Alaska to inform them of their right to a hearing.

Sincerely,

/s/ Catherine Schagh
Catherine Schagh., Director
Impact Aid Program

Enclosures

[SEAL] UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND
SECONDARY EDUCATION

May 15, 2006

NOTICE OF ACTION UNDER SECTION 8009(b) OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (20 U.S.C. § 7709(b))

State – Alaska

Period of Certification – July 1, 2005-June 30, 2006

As further described in the enclosed report, we have determined that Alaska is eligible to take into consideration Impact Aid payments in determining State aid to local educational agencies in accordance with section 8009(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7709(b)) for the period noted above.

Any local educational agency adversely affected by this action may request, in writing and within 60 days of the receipt of this notice, a hearing under section 8009(c)(3)(B) and 34 C.F.R. § 222.165. A request for a hearing should be sent to: Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-6244.

/s/ Catherine Schagh
Catherine Schagh, Director
Impact Aid Program

Enclosure

REPORT FOR THE YEAR JULY 1, 2005-JUNE 30, 2006 (STATE FISCAL YEAR 2006) UNDER SECTION 8009(b) OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (20 U.S.C. § 7709(b))

State – Alaska

Section I. Background

A. Procedural History

The Commissioner of the Alaska Department of Education and Early Development (State) timely notified the U.S. Department of Education (Department) and all Alaska school districts of the State's intention, under Section 8009(b) of the Elementary and Secondary Education Act of 1965, ("the Act"), to take Impact Aid payments into consideration in the calculation of school aid for the period of July 1, 2005 to June 30, 2006 (State fiscal year (FY) 2006). The notice was by numbered memorandum 2005-11 dated February 11, 2005. The Department received final FY 2004 data from the State in support of the request for certification under section 8009(b) on March 1, 2005.

On July 5, 2005, the Department notified all school districts in the State of their opportunity to request a predetermination hearing concerning the State's request, No district requested such a hearing.

B. State Foundation Formula

The current State school funding program, enacted in 1998 (see HCS CSSB 36 (FIN)(1998)), establishes a formula for disbursing general State foundation aid. Funding for public schools consists of State aid, a required local contribution, and eligible Federal Impact Aid, A district's State aid equals "basic need" minus a required local

contribution and 90 percent of eligible Federal Impact Aid for that fiscal year. Under the formula (Alaska Stet. §§ 14.17.410) "basic need" is a number ("N") multiplied by the "base student allocation," $3,940, see Alaska Stat. § 14.17.470). "N" is the sum of the products of three formulas:

1) the average daily membership (ADM) of all students (except correspondence students), times the applicable district cost factor under Alaska Stat. § 14.17.460, times the special needs factor set out in Alaska Stat. § 14.17,420(a)(1);

2) the ADM of intensive needs students times the intensive needs factor (see Alaska Stat. §14.17.420(a)(2));

3) the ADM of correspondence students times the correspondence factor (see Alaska Stat. § 14.17.430).

In addition, the formula provides for Quality School Funding and the calculation of foundation aid on a "hold harmless" basis.

Section II. Description of Disparity Calculation

A. Disparity Test

A State may take into consideration Impact Aid payments in calculating State aid if the Secretary determines that the amount of per-pupil expenditures or revenues of the local educational agency with the highest per-pupil expenditures or revenues in the State did not exceed the per-pupil expenditures or revenues of the LEA with the lowest per-pupil expenditures or revenues by more than 25

percent. 20 U.S.C.§ 7709(b)(2)(A). Alaska has satisfied this requirement for FY 2006 with the calculated disparity of 20-45 percent.

In making this determination, LEAs with expenditures or revenues above the 95th percentile or below the 5th percentile of such revenues or expenditures in the State are excluded, as required by the statute. *See* 20 U.S.C. 7709(b)(2)(B)(i) and the Appendix to 34 C.F.R. Subpart K. In addition, as required by statute (20 U.S.C. § 7709(b)(2)(ii)), the extent to which the State's program reflects the additional cost of providing free public education in particular types of LEAs or to particular types of students was considered by performing the disparity calculation on an adjusted ADM basis.

B. Fiscal Year 2004 Data in Support of FY 2006 Request

The revenue per adjusted ADM at the 95th percentile is $5,412 (Kodiak), and the revenue per adjusted ADM at the 5th percentile is $4,493 (Lower Yukon). The resulting disparity is 20.45 percent.

Section III. Findings

A. Approval

Based upon final FY 2004 data received by the Department on March 1, 2005, the Alaska State aid formula is certified under section 8009(c)(3) of the Impact Aid statute for FY 2006. The revenue disparity is 20.45 percent, which is within the 25 percent disparity allowed under section 8009(b)(2)(A).

B. Exclusions and Allowable Proportion

The State is certified to take into consideration Impact Aid payments when calculating State aid to districts for FY 2006. The State may not take into consideration the increased payment that results from the use of a weight of greater than 1.0 under subparagraph (B) of section 8003(a)(2) of the Act (children residing on Indian lands) or supplemental payments under section 8003(d) of the Act (children with disabilities) or funds received under section 8003(b)(2) of the Act (heavily impacted LEAs) that are in excess of amounts calculated under section 8003(b)(1) of the Act (Basic Support payments). *See* 20 U.S.C. § 7709(b)(1). The maximum proportion of payments that may be taken into consideration, calculated under section 8009(d)(1) for each LEA, is available upon request from the State.

Report Issued By: /s/ Catherine Schagh May 15, 2006
Catherine Schagh, Date
Director
Impact Aid Program